



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2709 OF 2023

Gunwant s/o Suka Rathod,
(Since deceased through L.R.s)

1. Smt. Alka wd/o Gunwant Rathod
Aged about 47 years, Occ. Household,
 2. Prajakta d/o Gunwant Rathod
Aged about 26 years, Occ. Student,
 3. Saurav s/o Gunwant Rathod
Aged about 25 years, Occ. Student,
- All R/o Green Park-2, Shrirampur, Pusad,
Tq. Pusad, District – Yavatmal.

... Petitioners

Versus

1. State of Maharashtra
Through it's Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai – 32
2. Director General of Police
Having it's Office near Regal Theatre,
Kulaba, Mumbai
3. Inspector General of Police
Amravati Range, Amravati.
4. Superintendent of Police,
Yavatmal

... Respondents

Ms. Aastha Sharma, Advocate for petitioners.
Mr. Piyush P. Pendke, AGP for respondent Nos.1 to 4/State.

CORAM : ANIL S. KILOR, &
RAJNISH R. VYAS, JJ.

RESERVED ON : 16.09.2025

PRONOUNCED ON: 19.09.2025

JUDGMENT : (PER : Rajnish R. Vyas,J)

1. Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally with consent of the learned counsel for the respective parties.

3. The petitioners by preferring the instant petition has challenged the order passed by the learned Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur in Original Application No.159 of 2013 dated 07/12/2022, by which the original application, was dismissed and order imposing punishment of compulsory retirement on predecessors of the petitioners by name 'Gunwant' (now deceased) was uphold.

4. Late Gunwant Rathod had joined the post of 'Police Shipai' on 15.11.1992. He was suspended vide order dated 17.01.2008. Three charges were framed against him and the enquiry officer found charges to be proved. The disciplinary authority, thereafter imposed punishment of dismissal on him. The said order was taken exception in appeal and vide its order dated 15.01.2011, modified the punishment of dismissal from service to the

compulsory retirement, in appeal. The revision preferred also met the same fate, so also the mercy petition preferred by the Late Gunwant.

5. After considering the contention of both the learned counsel for the parties and perusing the documents, it reveals that in suspension order only one charge regarding incident dated 08.01.2008 was mentioned and it was alleged that in programme Late Gunwant under the influence of liquor, came on the stage and started dancing so also caught hold the hand of one girl, was mentioned.

6. After his suspension, the charge-sheet was issued in which apart from the aforesaid charge, two more charges were added. The additional charges were, while working in the Police Station, said Gunwant was always found under the influence of liquor on duty and was also found misbehaving with the Superior Officers and, if any, one asked him to refrain from the such act, he threatened to commit suicide. He was also found in drunken state.

7. Another charge was, on 27.12.2007 during meeting of Tantamukta Village Committee, which was held in campus of Police Station, said Gunwant came under the influence of liquor and made nonsensical talks. Likewise on the same day when the programme of singing “Quawali” was going on, he came under the influence of liquor and started talking in adamant manner thereby created law and order situation. During the course

of inquiry, witnesses were examined.

8. We are aware of the fact that while exercising power under Articles 226 and 227 of the Constitution of India, High Court cannot venture into re-appreciation of evidence. But it needs to be clarified that the Court can definitely exercise power of judicial review, if on the face of it, conclusion is so arbitrary and capricious which no reasonable man could ever arrive at.

9. It is pertinent to mention here that the witnesses so examined were mostly the Police Officers. A girl, whose hand was allegedly caught by the said Gunwant was not examined. If the statements given by witnesses are considered holistically, it would be crystal clear that, there is absolutely no material by way of statement of witnesses to support charges alleged against said Gunwant. Witness No.1 has stated that he has not seen the incident dated 07.01.2008 and 08.01.2008 personally. He has also stated that he has never seen said Gunwant under the influence of liquor. Witness No. 2 though stated that he has seen said Gunwant behaving indecently by holding hand of the girl on stage but, surprisingly said girl was not examined. The said witness has also admitted that the incident in question was not reported to the Superior Officer. The said witness has also admitted that he has not signed the statement dated 11.01.2008 and reason advanced for non-signing was the

urgency of other work. Witness No.3 admitted that in order to determine whether said Gunwant was under the influence of liquor or not, no medical test was done. He also stated that he did not inform the Superior Officers about the misbehaviour of said Gunwant and also did not personally see the act of holding hand of the girl. He has also stated that he did not notice/seen whether said Gunwant had urinated in front of stage. Witness No.4 has also stated that he has not seen the incident. So far as Witness No.5 is concerned, he has stated that he cannot depose as to whether said Gunwant was under the influence of liquor or not, but he has just opined that Gunwant might have been under the influence of liquor. He has further stated that he has not seen the incident, subject matter of charge No. 3. Witness No. 6 has also not supported the case advanced by the respondent. Witness No.7 has stated that said Gunwant was not medically examined in order to determine whether he was under the influence of liquor or not. He has also stated that he is not aware about the name of the girl of whom the modesty was outraged. No station diary entry was taken. Witness-8 is the teacher, who has stated that he has signed his statement dated 11.01.2008 on the say of some other person. He admitted that said Gunwant did not utter irrelevant words. He also stated that on 27.12.2007, said Gunwant was not under the influence of liquor.

10. It is necessary to mention here that on the basis of aforesaid evidence no reasonable man could have arrived at the conclusion that charges

are made out. It is pertinent that Enquiry Officer must also consider all materials brought on record and if the report of enquiry is not based on the legal evidence, the report and the final order based thereupon, can not be sustained.

11. At this stage, it is necessary to mention here that Honourable Apex Court in the case of *Munnalal Vs. Union of India and Ors.*, reported in *2010(15) SCC 399* has observed that there has to be evidence of satisfactory nature to prove that the delinquent was found with any alcohol and in the absence of any positive evidence, the charges levelled against the appellant cannot be said to be prove satisfactorily.

12. In the instant case Non examination of the girl, whose modesty was allegedly outraged, non reporting of such serious incident that too by witnesses, who are police officers to the higher authorities, non taking of station diary entry in that regard, so also not subjecting said Gunwant for medical examination in order to determine, whether he had consumed the liquor or not, clearly shows that there was absolutely no evidence available before the authorities to impose the punishment. Further the order passed by the disciplinary authority is not a speaking order. Even, Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur, did not take into consideration the aforesaid fact and dismissed the original application. Thus

finding of fact is based on no evidence.

13. In view thereof, the writ petition is allowed in terms of prayer clause (A). We further direct the respondents authorities to notionally reinstate late Gunwant Sukha Rathod in service from the date of his termination, with all service benefits.

14. We further direct that, if any service benefits are paid to the family members, the said amount be adjusted from service benefits for which late Gunwant would have been entitled.

15. Petition is allowed in the aforesaid terms.

16. No order as to costs.

[Rajnish R. Vyas, J.]

[Anil S. Kilor,J.]

Prity